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ABSTRACT

This document presents survey questions concerning rights of students with disabilities in postsecondary education and the responsibilities and rights of student affairs staff. The survey is intended to provide necessary information about disability laws and recent legal decisions in the context of the increased enrollment of students with disabilities in higher education and the increasing need for accommodations. The 26-item survey identifies the correct responses (from yes/no choices), offers a rationale for the correct response, and provides one or more references. The survey addresses: Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, suitable accommodations, limitations on required accommodations, liability of the individual student affairs staff member, access to student diagnostic information, admissions tests, safety considerations, student housing, preferred terminology, and accommodations for individuals with specific impairments. (Contains 20 references.) (DB)

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ED 395 425

Postsecondary Accommodations for Academic and Career Success

PAACS

EC304819

Student Affairs Staff Survey of Knowledge of Disability Laws and Recent Legal Decisions

- Student Affairs staff need to be informed about disability laws and recent legal decisions that impact postsecondary education.
- More than 800,000 students with disabilities are currently enrolled in higher education nationwide.
- Section 504 of the Rehabilitation Act and the Americans With Disabilities Act (ADA) require institutions of higher learning to make accommodations and modifications of policy to insure these students with disabilities the right to an equal educational opportunity.
- Recent legal decisions have further defined the impact of disability laws on postsecondary education.
- Since the passage of the ADA, students with disabilities are making more demands on Student Affairs staff to provide accommodations.
- The number of grievances on disability issues in higher education filed with the Office of Civil Rights (OCR) has increased.

This newsletter is designed to provide Student Affairs staff with referenced answers to questions about their rights and the rights of students with disabilities in postsecondary education. The correct responses to the survey items are checked.

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	Yes	No
1. Section 504 of the 1973 Rehabilitation Act and the Americans With Disabilities Act (1990) prohibit discrimination on the basis of disability in any program or activity offered by an institution of higher education.	☑	☐

Section 504 states that qualified persons with disabilities may not be denied, on the basis of their disability, access to any program or activity offered by an institution of higher education that receives federal financial assistance. The ADA, Title III extended this mandate to include private institutions. With the accessibility of postsecondary education programs, more than 800,000 students with disabilities were reported to be enrolled in higher education institutions in the 1992-93 academic year ("Facts In Brief", 1995).

2. A person is considered to be a person with a disability if he/she has the disability, has a record of the disability, or is regarded as having the disability.	☑	☐

Under the Americans With Disabilities Act (ADA) (1990) and The Rehabilitation Act (1973), Section 504, Subpart E - Postsecondary Education, "an individual with a disability" is a person who: (1) has a physical or mental impairment which substantially limits a major life activity; (2) has a record or history of such an impairment; or (3) is regarded as having such an impairment (Equal Eomployment Opportunity Commission, 1991).

3. A qualified person with a disability meets the academic and technical standards required for admission or participation in a particular program or activity.	☑	☐

The Federal Register, Title 34 (as cited in Frank & Wade, 1993) defines a qualified person with a disability as one who meets the technical and academic standards for entry into school. Therefore, a student with a disability must meet all of the academic and nonacademic criteria for admission and continued enrollment in a school program. The courts interpretation of Section 504 does not require a school to lower its standards. It does require schools to provide reasonable accommodations that afford an equal opportunity for students with disabilities.

	Yes	No
4. The university must operate its programs in the most integrated setting appropriate.	☑	☐

Section 504 mandates that programs be accessible to students with disabilities. Wichita State University violated Section 504 by hiding a medallion in an inaccessible location. Students with mobility impairments could not participate in the contest (Kincaid & Simon, 1994). Section 504 also states that activities developed to be "separate but equal" are inappropriate unless they can be shown to be developed to meet the specific, unique needs of students with disabilities (Jarrow, 1991).

5. Student requests for accommodation must be provided even when the accommodation would result in a fundamental alteration of the program.	☐	☑

The Ohio Civil Rights Commission upheld Case Western Reserve University's refusal to accommodate a student because such accommodation would "unduly burden the school and require it to modify the essential nature of its program" (Kincaid, 1995, May). The case relied on federal law (Southeastern Community College v. Davis, 1979) in its decision that the student was not otherwise qualified with or without accommodation.

6. Student Affairs staff are required to provide a student with a disability accommodation even if the student does not request it.	☐	☑

The student has the responsibility to self-identify to the designated compliance officer or disability services office, provide documentation of a disability, and ask for accommodation before the institution is required to provide that accommodation. In the case of Salvador v. Bell the Office of Civil Rights (OCR) ruled in favor of Roosevelt University because the student had not self-identified and requested the necessary accommodation (Jarrow, 1991).

	Yes	No
7. The university may refuse to grant a student's request for an accommodation which is not specifically recommended in the student's documentation.	☑	☐

In the case of Cumberland Community College, NJ, the OCR upheld a college's refusal to grant a student's request for an accommodation which was not specifically recommended in the student's documentation (Kincaid, 1995, September).

8. An individual Student Affairs staff member who fails to provide an accommodation to a student with a documented disability may be held personally liable.	☑	☐

In the case of Dinsmore v. University of California at Berkeley, a professor refused to allow extended time on math tests to a student with a learning disability whose documentation specified the need for that accommodation. The professor maintained that giving the student extended time provided an unfair advantage. The Office for Disability Services and the university's administrators supported the student's request. However, the professor still refused to allow the accommodation. The OCR found the institution violated Section 504 and ordered the university to establish necessary procedures to ensure that no student would be denied accommodation for equal access. OCR held the institution responsible. The student filed a civil suit against the professor for abridgement of civil rights and the court accepted the case. The case was settled out of court for an unspecified amount. This case signaled that a faculty member could be held liable if his/her behavior denied a student necessary accommodation (Jarrow, 1992).

According to Section 504 of the Rehabilitation Act (1973), students could only file a compliant with federal agencies to investigate a charge of discrimination. Under the Americans With Disabilities Act (1990) students may sue the institution if they believe they have been denied their right to equal access (Jaschik, 1993).

	Yes	No
9. Separate, special or different programs that are designed to provide a benefit to students with disabilities can be used to restrict the participation of students with disabilities in general, integrated activities.	☐	☑
Qualified individuals with disabilities must be given the option to participate in regular programs even where special accommodations have been made (Jarrow, 1991).		
10. Student Affairs staff, other than those in the disability services office, have the right to access diagnostic information regarding a student's disability.	☐	☑
Faculty/staff do not have the right to access the students' diagnostic information (Jarrow, 1992). The Department of Education follows the rules of confidentiality that are described in Section 503 of the Rehabilitation Act (1973). A number of court cases as well as OCR findings have further defined Section 503 as the standard for compliance. According to the rules of confidentiality, faculty/staff members need only know the accommodations that are necessary to guarantee an equal opportunity for the student.		
11. Preadmission inquiries as to whether a person has a disability are permissible.	☐	☑
Preadmission inquiries as to whether a person has a disability are prohibited (Jarrow, 1991). In the case of Thomas M. Cooley Law School, the OCR found the institution in violation of Section 504 for asking applicants on its application form if they have a mental illness and for asking why they took the LSAT under special conditions (Kincaid & Simon, 1994). After a student is admitted, it is appropriate to ask for any information that may be pertinent to enrollment. A letter may be sent inviting a student to identify to the designated compliance officer or disability services office if the student needs some accommodation.		

	Yes	No
12. Scholarships based on ACT scores must allow for accommodations for students with documented disabilities.	☑	☐

Section 504 lists accommodations to testing to include readers, scribes, separate proctored settings, extended time, and the use of adaptive equipment (Jarrow, 1991).

13. The university may use as sole criteria for admission or rejection a test that has been shown to be discriminatory for persons with disabilities.	☐	☑

According to Section 504, "the university may not use as sole criteria for admission or rejection a test that has been shown to be discriminatory for persons with disabilities." A standardized admissions test may be used as one among a set of admissions criteria. Other criteria may include letters of recommendation, high school rank, and grade point average. It is appropriate to offer alternatives to students who wish to self-identify (Harris, Horn, & McCarthy, 1994).

14. An institution may refuse admission to a student due to his/her psychiatric problems when they pose a health or safety risk.	☑	☐

In the Skagit Valley College, WA case, the OCR stated that in determining whether to admit a student with a disability, the college must make a "fair, stereotype-free assessment based on reasonably reliable information from objective sources, such as knowledgeable medical professionals." To justify a denial of admission, an institution must provide objective evidence that the student poses a health or safety risk to the college. Disruptive behavior alone may not be sufficient (Kincaid, 1993, November).

	Yes	No
15. According to Section 504 and the ADA the institution may establish reasonable rules of behavior to maintain a safe and orderly educational environment.	☑	☐

The Western Michigan University case reinforced the fact that the institution may establish reasonable rules of behavior to maintain a safe and orderly educational environment. The OCR agreed with the university's decision to suspend a student with paranoid schizophrenia from classes and prohibit her from entering the campus. The university provided substantial evidence that the student had engaged in behavior which disrupted university activities and which was reasonably viewed as disturbing and threatening by students, faculty, and staff. The OCR found that the university made its decision to suspend the student on its observations of the student and the opinion of psychiatric professionals that the student could not currently abide by the student conduct code. The university made it clear to the applicant that she would be permitted to seek reenrollment when she provided medical documentation attesting to her emotional stability (Kincaid & Simon, 1994).

16. Student Affairs staff are prohibited from counseling a student with a disability into more restrictive career paths than are recommended to nondisabled students with similar abilities and interests.	☑	☐

Section 504 specifies that counseling services, including personal, academic, vocational guidance, and placement counseling, be provided without discrimination on the basis of disability. The institution is responsible to provide counseling services that are not restrictive but based on the student's abilities, interests, and career choices (Jarrow, 1991).

17. Postings for job announcements must be readily accessible to students with visual impairments.	☑	☐

In the case of Los Rios Community College, CA, the OCR stated that postsecondary institutions should be prepared to make printed materials available in a reasonable and timely manner in all three mediums: enlarged print, auditory, and Braille. Los Rios Community College agreed to have postings for job announcements readily accessible upon request for students with visual impairments. (Kincaid, 1994, September).

	Yes	No
18. The name of the Section 504 coordinator must be identified in recruiting materials such as application forms and school bulletins.	☑	☐
In the case of Ferris State University, the OCR found fault with the university application and school bulletin which failed to mention the identity of the Section 504 coordinator (Kincaid, 1993, May). In another case, the OCR also found the University of New England failed to indicate the name of the Section 504 coordinator in its materials (Kincaid, 1993, September).		
19. The provision of an attendant for a student with a disability is the responsibility of the institution.	☐	☑
The university is not required to provide personal services such as attendant care, or personal aids such as wheelchairs or eyeglasses (Heyward, 1993).		
20. A student who believes that a university's residential life policies discriminate against him/her on the basis of disability may not only file a claim with the U.S. Department of Education's Office for Civil Rights, but may also file a complaint with HUD.	☑	☐
The Fair Housing Act also applies to university housing. Therefore, students with disabilities may file a complaint with the OCR as well as HUD (Kincaid, 1994, November).		
21. A student with a disability is entitled to have more than one housing option presented if options exist for nondisabled students.	☑	☐
Section 504 specifies that university housing be available in sufficient quantity and variety so that the options for living accommodations available to students with disabilities, as a whole, is comparable to that available to nondisabled students. (Jarrow, 1991).		

	Yes	No
22. A student with a disability who needs attendant care is automatically assigned to a single room.	☐	☑

In the Coleman v Zatechka case, the OCR found the University of Nebraska in violation of Section 504 and the ADA by refusing to allow a student who needed attendant care to participate in the roommate assignment program. The student was an "otherwise qualified" person with a disability because she met the essential academic and nonacademic criteria: admission to the university and submission of housing application (Kincaid, 1993, November).

23. If an institution provides assistance to nondisabled students for off-campus housing, then the institution must provide options to students with disabilities for accessible off-campus housing.	☑	☐

According to Section 504, if an institution provides assistance to nondisabled students for off-campus housing, then the institution must provide options to students with disabilities for accessible off-campus housing (Jarrow, 1991).

24. Institutions must provide comparable opportunities for weight training to students with disabilities.	☑	☐

Section 504 specifically states that institutions must provide equal opportunities for students with disabilities in intercollegiate activities (Jarrow, 1991).

	Yes	No
25. Handicapped student is an appropriate way to refer to a student who has a disability.	☐	☑

Although Section 504 uses the term handicapped persons, the language has changed. People with disabilities are people first. The Americans With Disabilities Act (1990) officially changed the way people with disabilities are referred to and provided the model. The person first and then the disability. This emphasizes the person and not the disability.

26. A student with a learning disability must have a diagnostic evaluation that is less than three years old to be eligible for academic reasonable accommodations.	☑	☐

Although OCR has not made a specific ruling on this issue, it is generally accepted procedure to ascertain that appropriate academic accommodations can only be made on the current functioning level of the student. OCR was aware of that ruling at the University of Arizona and did not indicate that it was inappropriate (D. Perreira, personal communication, October 4, 1995). Boston University has indicated that it follows the three-year limit on documentation for learning disabilities and recently announced that currently enrolled students must keep their documentation updated (Lewin, 1996).

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Student Affairs Staff Survey of Knowledge of Disability Laws and Recent Legal Decisions

Please respond to the following statements by checking either Yes, No, or Don't Know.

	Yes	No	Don't Know
1. Section 504 of the 1973 Rehabilitation Act and the Americans With Disabilties Act (ADA) prohibit discrimination on the basis of disability in any program or activity offered by an institution of higher education.	☐	☐	☐
2. A person is considered to be a person with a disability if he/she has the disability, has a record of the disability, or is regarded as having the disability.	☐	☐	☐
3. A qualified person with a disability meets the academic and technical standards required for admission or participation in a particular program or activity.	☐	☐	☐
4. The university must operate its programs in the most integrated setting appropriate.	☐	☐	☐
5. Student requests for accommodation must be provided when the accommodation would result in a fundamental alteration of the program.	☐	☐	☐
6. Student Affairs staff are required to provide a student with a disability accommodation even if the student does not request it.	☐	☐	☐
7. The university may refuse to grant a student's request for an accommodation which is not specifically recommended in the student's documentation.	☐	☐	☐
8. An individual Student Affairs staff member who fails to provide an accommodation to a student with a documented disability may be held personally liable.	☐	☐	☐
9. Separate, special, or different programs that are designed to provide a benefit to students with disabilities can be used to restrict the participation of students with disabilities in general, integrated activities.	☐	☐	☐

	Yes	No	Don't Know
10. Student Affairs staff, other than those in disability services office, have the right to access diagnostic information regarding a student's disability.	☐	☐	☐
11. Preadmission inquiries as to whether a person has a disability are permissible.	☐	☐	☐
12. Scholarships based on ACT scores must allow for accommodations for students with documented disabilities.	☐	☐	☐
13. The university may use as sole criteria for admission or rejection a test that has been shown to be discriminatory for persons with disabilities.	☐	☐	☐
14. An institution may refuse admission to a student due to his/her psychiatric problems when they pose a health or safety risk.	☐	☐	☐
15. According to Section 504 and the ADA the institution may establish reasonable rules of behavior to maintain a safe and orderly educational environment.	☐	☐	☐
16. Student Affairs staff are prohibited from counseling a student with a disability into more restrictive career paths than are recommended to nondisabled students with similar abilities and interests.	☐	☐	☐
17. Postings for job announcements must be readily accessible to students with visual impairments.	☐	☐	☐
18. The name of the Section 504 coordinator must be indentified in recruiting materials such as application forms and school bulletins.	☐	☐	☐
19. The provision of an attendant for a student with a disability is the responsibility of the institution.	☐	☐	☐
20. A student who believes that a university's residential life policies discriminate against him/her on the basis of disability may not only file a claim with the U.S. Department of Education's Office for Civil Rights, but may also file a complaint with HUD.	☐	☐	☐
21. A student with a disability is entitled to have more than one housing option presented if options exist for nondisabled students.	☐	☐	☐

	Yes	No	Don't Know
22. A student with a disability who needs attendant care is automatically assigned to a single room.	☐	☐	☐
23. If an institution provides assistance to nondisabled students for off-campus housing, then the institution must provide options to students with disabilities for accessible off-campus housing.	☐	☐	☐
24. Institutions must provide comparable opportunities for weight training to students with disabilities.	☐	☐	☐
25. Handicapped student is an appropriate way to refer to a student who has a disability.	☐	☐	☐
26. A student with a learning disability must have a diagnostic evaluation that is less than three years old to be eligible for reasonable academic accommodations.	☐	☐	☐

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